

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate License
Application of Scott W. Hartwick

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above matter came on for hearing at 9:30 a.m. on May 17, 2005 at the Office of Administrative Hearings in Minneapolis. Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). Scott W. Hartwick ("Applicant"), 2205 William Tell Road, St. Paul, MN 55109, appeared on his own behalf. The hearing record closed at the conclusion of the hearing on May 17, 2005.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101-2198, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Whether the denial of the application by Scott W. Hartwick for licensure as a real estate salesperson should be affirmed.

The Administrative Law Judge recommends affirming the denial of Mr. Hartwick's application because of his prior conviction for counterfeiting.

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Scott W. Hartwick was licensed initially as a real estate salesperson by the Minnesota Department of Commerce in July, 1983. He worked as a real estate salesperson for Edina Realty from that time until September 15, 1994, when the real estate broker in charge of his employment at Edina Realty terminated Mr. Hartwick's license and returned it to the Department.^[1]

2. On September 8, 1994, Mr. Hartwick was indicted in the United States District Court for the District of Minnesota for six counts of fraudulently counterfeiting federal reserve notes in the denominations of \$100, \$50 and \$20. On February 17, 1995, Mr. Hartwick pled guilty to three felony counts of counterfeiting.^[2]

3. Under Minn. Rule 2800.1600, subp. 2 (1993), Hartwick was obligated at the time of his indictment to inform the Department of the felony charges against him. Hartwick never notified the Department of the charges at the time they were made.

4. On August 3, 2004, Mr. Hartwick filed an application for a real estate salesperson's license. The Department informed Mr. Hartwick that it would deny his application because of the counterfeiting conviction, and this hearing process followed pursuant to Mr. Hartwick's request.

5. During the course of his employment as a real estate salesperson, Mr. Hartwick impressed his colleagues at Edina Realty favorably as a knowledgeable, competent real estate professional.^[3] His achievements and skill as a real estate salesperson were recognized formally by Edina Realty and the real estate industry on two occasions during the early 1990's: he was made a member of "The Dozen," which is a national sales award recognition for exceptional performance, designating a ranking in the top five percent of all residential real estate producers in the nation; and he was inducted into the "President's Circle," an honor designating his place among the top three percent of all real estate sales associates in the country.^[4]

6. Robert Sneen, a licensed real estate broker who was Mr. Hartwick's manager at Edina Realty between 1983 and 1991, has volunteered to rehire Mr. Hartwick if his licensure is restored. In that connection, Mr. Sneen has agreed to oversee all transactions Mr. Hartwick becomes involved in as a real estate salesperson. Mr. Sneen also volunteers to report to the Department of Commerce all real estate activity engaged in by Mr. Hartwick on a monthly basis, which report would include comments from Mr. Sneen.^[5]

7. Mr. Hartwick asserts that, if he is granted a real estate salesperson's license, he will partner with another licensed realtor on every transaction he is involved with, so long as the Commerce Department deems that necessary. Specifically, commissions from all of his buyers and sellers will be shared with another agent on a 50/50 partnership basis (or up to 60/40 if the transaction is originated by the other agent). By such means, Mr. Hartwick believes oversight by a qualified agent will be provided on each and every transaction in which he becomes involved. Mr. Hartwick has offered to inform the Department of the identity of the overseeing agent with respect to each of his transactions by submitting a monthly report. The monthly report would include the number of buyers and sellers worked with and the agent(s) with whom he partnered, as well as comments from his broker/manager (Robert Sneen). Mr. Hartwick offers also to submit to a yearly review by the Department, to examine the transactions Mr. Hartwick was involved with during the year and the record-keeping procedures utilized by himself, his partners and his manager. Any changes in procedures or any additional conditions requested by the Department for maintaining his licensure would be followed.^[6]

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. § § 14.50 and 45.027, subd. 7.

2. Any of the above Findings more properly termed Conclusions are hereby incorporated as such.

3. The Applicant was given timely and proper notice of the hearing in this matter, and the Department has complied with all relevant procedural requirements of law and rule.

4. The Applicant has not demonstrated by a preponderance of the evidence facts that show cause for the Commissioner to overturn the denial of his application for licensure as a real estate salesperson.

5. The counterfeiting activity for which Mr. Hartwick pled guilty in 1995 demonstrates untrustworthiness within the meaning of Minn. Stat. § 45.027, subd. 7(4). Therefore, the issuance of a real estate salesperson's license would not be in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(1).

6. Mr. Hartwick's failure to notify the Department of his felony criminal charges in 1994 violated Minn. Rule 2800.1600, subp. 2 and is an additional basis for denial of licensure within the meaning of Minn. Stat. § 45.027, subd. 7(2).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Application for Licensure as a real estate salesperson by Scott W. Hartwick be **DENIED**.

Dated this 13th day of June, 2005

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

MEMORANDUM

Mr. Hartwick produced evidence designed to demonstrate that he is presently fit to perform the duties entrusted to a real estate salesperson. Real estate salespersons are entrusted with a handling of clients' money in a variety of transactions. The underlying conduct which served as the basis for Mr. Hartwick's conviction for counterfeiting relates directly to the handling of money, in particular handling money which he, as a licensed real estate salesperson, may be entrusted to possess. It is noted that real estate professionals routinely hold earnest money in escrow or trust accounts, and it is foreseeable that such monies may be presented in the form of cash on some occasions. The Administrative Law Judge agrees with the Department's argument that a conviction of counterfeiting demonstrates untrustworthiness, and is a basis here for denying licensure.

In addition, Subd. 10 of Minn. Stat. § 45.027 provides that Minn. Stat. Ch. 364 does not apply where the underlying conduct on which an applicant's conviction is based would be grounds for denial of licensure. Chapter 364 provides that state licensure cannot be denied solely or in part because of a prior conviction of a crime, unless the crime relates directly to the occupation for which licensure is sought.^[7] As noted above, such a direct relation exists in this case. And, while Mr. Hartwick has offered evidence of his competence as a real estate professional, there is no evidence, except the testimony of former colleagues, that Mr. Hartwick can be trusted today. Additional, substantial evidence of rehabilitation is lacking. Based on this record, it is appropriate for the Commissioner of Commerce to continue to bar Mr. Hartwick from reinstatement of his license as a real estate salesperson.

R.C.L.

^[1] Testimony of Cheryl Costello.

^[2] Department's Ex. 1.

^[3] Testimonies of James Ylinen, Tim McDonough and Robert Sneen.

^[4] Applicant's Ex. 2.

^[5] Testimony of Robert Sneen.

^[6] Applicant's Ex. 2.

^[7] Minn. Stat. § 364.03, Subd. 1. (Emphasis supplied)